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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

JOHN C. CASTLE)	CASE NO. 09-6142-HO
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
ORENCO SYSTEMS, INC., an Oregon)	
Corporation,)	
)	
Defendant.)	
)	

INTRODUCTION

Plaintiff John Castle (Castle), filed this action against his former employer, defendant Orenco Systems Inc., (Orenco) alleging age discrimination and a hostile work environment pursuant to the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 623 (a) and (d) and ORS 659A.030. [#1]. This court on December 3, 2010, granted defendant's Motion for Summary Judgment [#45] in part and denied it in part. [#86]. As a result,

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plaintiff's claims and defendant's counterclaims were dismissed.

Id.

Plaintiff moves for attorney fees, asserting he prevailed on defendant's counterclaims. [#88]. Defendant also moves for attorney fees as the prevailing party on plaintiff's claims. [#89].

DISCUSSION

Unlike Title VII which allows prevailing parties (including defendants), to recover attorney's fees, the ADEA does not provide for a prevailing defendant to recover attorney fees. However, the court retains the power to order an award of fees "when the losing party has acted in bad faith, vexatiously, wantonly or for oppressive reasons." *Alyeska Pipeline Service Co., v. Wilderness Society*, 421 U.S. 240, 258-59 (1975).

At the same time courts are admonished to reserve this power for cases in which a plaintiff's actions are "frivolous, unreasonable or without foundation." *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978); see also *Nosie v. Assoc. of Flight Attendants- CWA, AFL*, 722 F.Supp. 2d 1181, 1198 (D.Hawaii, 2010) (citing *Turlington v. Atlanta Gas Light Co.*, 135 F.3d 1428, 1437 (11th Cir. 1998) (holding district court may award a prevailing ADEA defendant attorney's fees only upon finding a plaintiff litigated in bad faith) (emphasis added)).

Given the newly clarified burden of proof which an ADEA

plaintiff bears, I do not find plaintiff's claims in this matter rise to the level of bad faith. Similarly, I find defendant's counterclaims were objectively reasonable under the circumstances.

I therefore decline to award either party attorney's fees. Each party shall bear its own costs of litigation.

CONCLUSION

For the reasons detailed above, plaintiff's Motion for Attorney Fees [#88] is DENIED. Defendants Motion For Attorney Fees is DENIED. [#89]

IT IS SO ORDERED.

DATED this 5th day of January, 2011.

Michael C. Hogan
United States District Judge